

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

GEORGE WEEKS,

Plaintiff,

vs.

DR. HURST and NP CROSBY,

Defendants.

CV 20-00001-H-DLC-JTJ

ORDER

Plaintiff George Weeks has filed a Request for Entry of Default (Doc. 12) and a Motion for Default Judgment (Doc. 13) arguing Defendants failed to timely answer or otherwise defend against his Complaint.

On May 12, 2020, this Court issued an Order requesting Defendants Hurst and Crosby to waive service of summons of the Complaint. (Doc. 4.) The request was served on counsel for the Montana Department of Corrections and a response was due on or before June 11, 2020. Defendants did not file a notice of waiver of service of summons as requested and on July 15, 2020, the Court issued an Order requiring counsel for the Montana Department of Corrections to notify the Court on or before August 7, 2020 whether Defendants Hurst and Crosby needed to be personally served by the United States Marshals Service. (Doc. 10.) On July 28, 2020, Mr. Weeks filed his Request for Entry of Default and Motion for Default Judgment. (Docs. 12, 13.)

Rule 55(a) of the Federal Rules of Civil Procedure provides, “[w]hen a party

against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Although Mr. Weeks asserts that Defendants were served with the Complaint, there is no indication of proper service in the record. The Court has requested a waiver of service of summons, but no such waiver has been received. As such, Defendants have not yet been properly served. Should Defendants fail to respond by August 7, 2020, the Court will direct the United States Marshals to personally serve Mr. Weeks's Complaint.

Until such time as Defendants have been properly served, there is no basis for entry of default or for a default judgment.

ACCORDINGLY, IT IS HEREBY ORDERED THAT Mr. Weeks's Request for Entry of Default (Doc. 12) and Motion for Default Judgment (Doc. 13) are DENIED WITHOUT PREJUDICE and subject to renewal should Defendants fail to respond after having been properly served.

DATED this 4th day of August, 2020.

/s/ John Johnston
John Johnston
United States Magistrate Judge